

INTRODUCTION

A number of required procedures accompany the introduction of federal funding to a project. Non-compliance with these procedures will jeopardize federal participation in the project.

The information in this document is a brief overview of the processes that sponsors must follow to develop their locally-administered federal aid project(s). Further information regarding process details can be found in the ■Procedures for Locally Administered Federal Aid Projects• Manual.

PROJECT FINANCES

Federal funding of transportation projects is through a **reimbursement** program, and **not a grant**. Sponsors are required to pay all project expenses first, then apply to NYSDOT for reimbursement. NYSDOT, in turn, then applies to the Federal Highway Administration (FHWA) for reimbursement of funds sent to sponsors. Requests for reimbursement can be made on a periodic basis or at the end of a phase or project, at the option of the sponsor.

Federal funding consists of two parts: a federal share and a non-federal share. For most projects, the funding is 80% federal and 20% non-federal. Local sponsors must provide the 20% non-federal share. The **non-federal share is an integral part of federal aid**, and should not be considered as separate funding. Sources for the non-federal share of project costs can include:

- Local funds
- CHIPs capital funds
- Legislative Member Item funds
- other federal funds, but not other USDOT funds
- certain non-cash sources, such as donations of land, material, and labor, whose use and values are pre-approved by NYSDOT

Note: Use of Multi-Modal Program funds as the non-federal share is prohibited by NYS law.

For many projects, **Marchiselli** program funding is available to offset a portion of the non-federal share of project costs. The final funding for projects that meet the eligibility requirements for the Marchiselli program is 80% federal, 15% Marchiselli, and 5% local. Marchiselli eligible work includes roadways, bridges, sidewalks, shared use paths, pedestrian bridges, and bikeways that are located within an existing local highway right-of-way. Due to the high demand for limited funds, Marchiselli aid may not be available for every project phase. Generally, annual Marchiselli funds are allocated first to projects in the construction phase, then to other projects in earlier phases.

Federal aid **reimbursements** are made by the Office of the Comptroller generally within 60 days of receipt of an acceptable reimbursement request. Marchiselli payments are made on a quarterly basis by the Thruway Authority, with payments made at the end of March, June, September, and December.

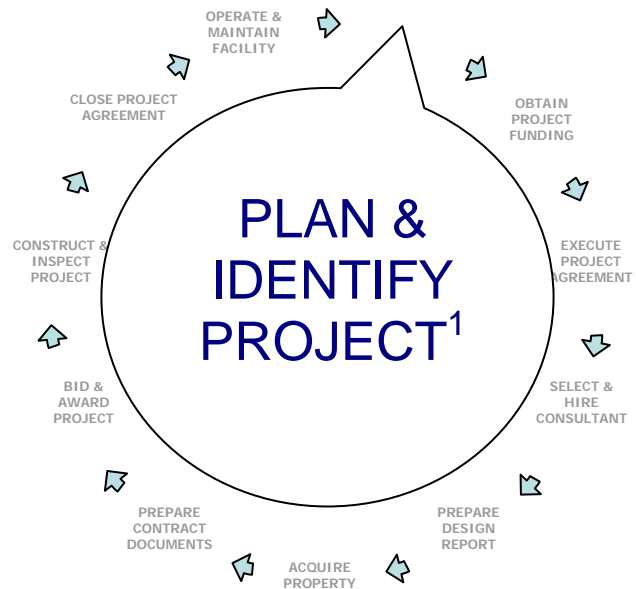
Projects are funded through federal transportation legislation. In some programs, project funding is capped; in other programs, federal funding may be increased to cover reasonable project cost increases if approved by the appropriate MPO and/or NYSDOT. Since funding in each federal program is limited, cost increases for a given project must be reduced by an offset to a different project in the same program.

All projects are expected to be advanced at the same scope for which they were approved. Unavoidable modifications to the scope of a project must be approved by NYSDOT. The primary criteria for approval of the scope change request will be the degree to which the initial project objective is still being met.

Local officials should perform **adequate planning** before a project is identified and federal and/or state funding is sought for a specific project.

Project should be consistent with and help to implement:

- municipality's comprehensive and/or master plan
- regional transportation plans [including the long range plan prepared by the appropriate metropolitan planning organization (MPO)]
- municipality's land use plan,
- pedestrian plan,
- asset management plans (e.g. - pavement management plan, bridge management plan, etc.).

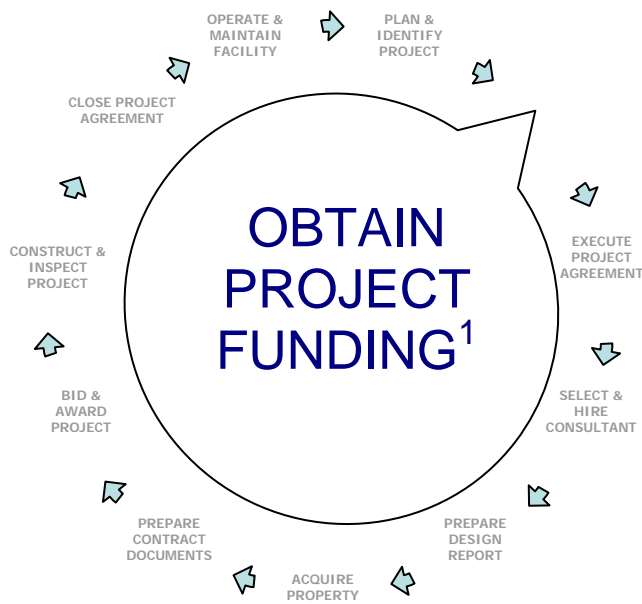


Project objectives or goals should be defined for each project. Project objectives provide an overall context for what the project will accomplish, and will guide project decisions.

Each project must have

- **logical termini** (The beginning and end points of the project must make sense.)
- **independent utility** (Project is not dependent on another project.)
Note: Projects that are dependent on each other should be progressed through the environmental review process as a single action.
- **public use** (Improvements that do not serve a public use must be privately financed.)
- **transportation function** (Facilities that do not serve a transportation function cannot be funded with transportation dollars.)

Staging should be considered, especially for long and expensive projects. Long bikeways, for example, should be planned so that they can be built in stages, with each stage having logical termini, independent utility, and appropriate trail head facilities.



Once a project is identified, the funding source needs to be established. The first step in this process is to develop a good, **detailed estimate of**

- design costs
- property acquisition costs
- construction costs (Contracting and wage requirements should be considered.)
- construction supervision/inspection costs
- miscellaneous costs (e.g. – utilities, railroad, etc.)

Project costs should

- be estimated by appropriate professionals
- include contingencies
- account for inflation over the expected project timeline

After adequate planning has been done, a viable project has been identified, and a good detailed cost estimate prepared, then funding can be sought. Seeking funds at this point makes sense, because the merits of the project and its costs can be accurately presented to those making funding decisions.

When seeking funding, it is important to

- become familiar with potential fund sources and their associated requirements and rules
- consider sponsor's willingness/ability to comply with those requirements
- consider timing, as some programs require the obligation of funds within a certain timeframe (Since design approval is a prerequisite to the obligation of funds for right of way acquisition and construction, requesting federal funds for these project phases before design approval has been obtained may be fruitless.)

When preparing the application for funding, it is important to

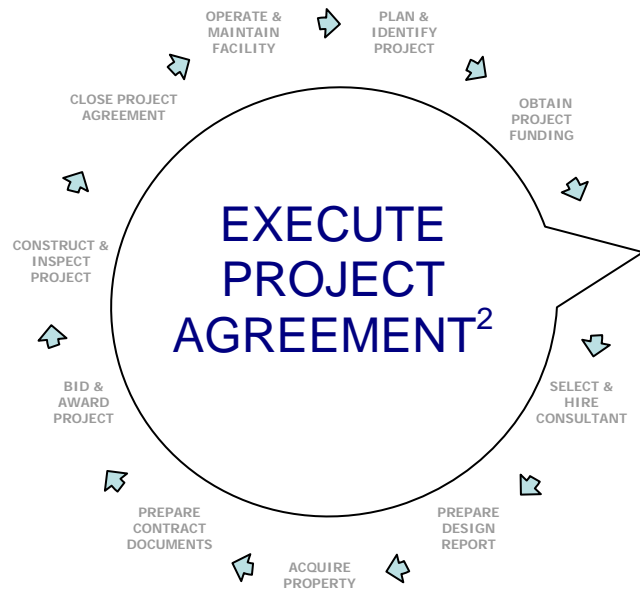
- clearly describe the project scope (Generally, projects need to be developed at the same scope for which funding was approved. Changes in project scope may be allowed under certain circumstances, but will need approval of one or more of the following: the appropriate metropolitan planning organization(s), NYSDOT, the Federal Highway Administration and/or the U.S. Congress.)
 - quantify realistic benefits
 - be sure that the cost estimate is up to date and adequately describes needed funds
- Note: Many fund sources (including the Transportation Enhancements Program) cap funds for a project, making it difficult or impossible to obtain additional funds to overcome financial shortfalls.*

¹ Reference LAFAP Manual, Chapters 2, 3, and 4

Project agreements between NYSDOT and the project sponsor (e.g. – a local government)

- are required
- define how each phase of the project is to be funded (by federal, state, local matching, private funds, donations, etc.)
- identify project costs by project phase (e.g. - preliminary engineering, right-of-way acquisition, construction and inspection/supervision, etc.)
- identify project tasks and allocation of responsibility
- have a standard format designed by NYSDOT

Note: Each NYSDOT/sponsor agreement must contain a resolution passed by the sponsor's governing body.



Before a project agreement can be executed

- **the project must be formally initiated.** (Projects are initiated by Initial Project Proposal (IPP))
- **a project management plan must be developed and submitted to NYSDOT.** (Sponsors are required to prepare a Project Management Plan (PMP) to document their strategy for implementing a given project. The plan identifies the lead agency for the project, the person/party responsible for key project development tasks, and all project fund sources.)
- **the project must be listed on the TIP, if necessary, and on the STIP.** (A TIP is a transportation-related capital program outlining projects that will be undertaken over a designated time period. The State Transportation Improvement Program, or STIP, is a compilation of the TIPs developed by all of the MPOs and the transportation programs developed for non-urbanized areas. The STIP is the document that enables FHWA to obligate funds for a specific project. FHWA cannot authorize the use of any federal funds unless the project, and the correct phase, is listed on the STIP.)
- **Authorization for the appropriate project phase(s) must be obtained from FHWA.** NYSDOT obtains federal authorization to begin the appropriate project phase(s).

The agreement must be signed by

- the Sponsor
- NYSDOT
- the Attorney General's office
- the Office of the State Comptroller

NOTE: NYSDOT will grant the sponsor an authorization to proceed with the appropriate project phase(s) **after the agreement is signed. Reimbursement of eligible project costs can only be made to the sponsor after the agreement is fully-signed.**

All work done before receipt of written authorization to begin work from NYSDOT will be ineligible for federal reimbursement. This authorization to proceed cannot be granted until the agreement between the State and the project sponsor is executed.



The local project process developed by NYSDOT is founded on certifications provided by professionals licensed to perform work in New York State.

- Professional engineers' certifications are acceptable for all types of projects.
- Professional landscape architects' certifications are acceptable for landscaping project.
- Registered architects' certifications are acceptable only for work involving buildings.

Licensed professionals can be

- **Municipal employees**
- **Employees of consultants on retainer by municipalities** (Consultants retained by municipalities can be used to perform project work only if the firm was selected within the past three years in an open, competitive process that complies with federal law. Absent a municipal engineer, a sponsor can utilize a retained consultant to provide technical guidance and to manage a consultant hired to perform project work. Costs incurred by the sponsor for the retained consultant's services are federally reimbursable.)
- **Employees of consultants selected for this project**
 - Consultants must be selected using one of the following **qualifications-based selection processes** where cost is not a selection factor:

- a project specific selection process
- the County Highway Superintendents Association's (CHSA) LDSA list
- a sponsor's process that has been pre-approved by NYSDOT

NOTE: If the cost of work to be done by a consultant is borne solely by the sponsor without use of federal aid (including the non-federal share) then the sponsor can hire a firm using its process.

- After selection, the sponsor negotiates tasks and resources with consultant and executes an agreement making sure that applicable Federal language is included

A **design report** must be prepared for **each project**. The design report provides documentation for project eligibility, technical decisions, environmental review, public involvement, coordination with affected municipalities and regulatory agencies, and costs. For projects that have significant impacts, a Design Report/Environmental Assessment or a Design Report/Environmental Impact Statement may be necessary.

State Environmental Quality Review Act (**SEQRA**) regulations, 6 NYCRR Part 617, apply to all projects. The sponsor, as lead agency, is responsible for compliance and for making the final SEQRA determination.

National Environmental Policy Act (**NEPA**) regulations, 23 CFR 771, apply to all federally funded projects. Sponsors are required to complete the NEPA checklist and include it in the design report. NEPA determinations are made by NYSDOT or FHWA.

As a minimum, an informal **public information meeting** must be held to solicit input regarding potential environmental impacts from the general public and to allow the public an opportunity to comment on the proposed project. In some cases, a formal public hearing may be required.

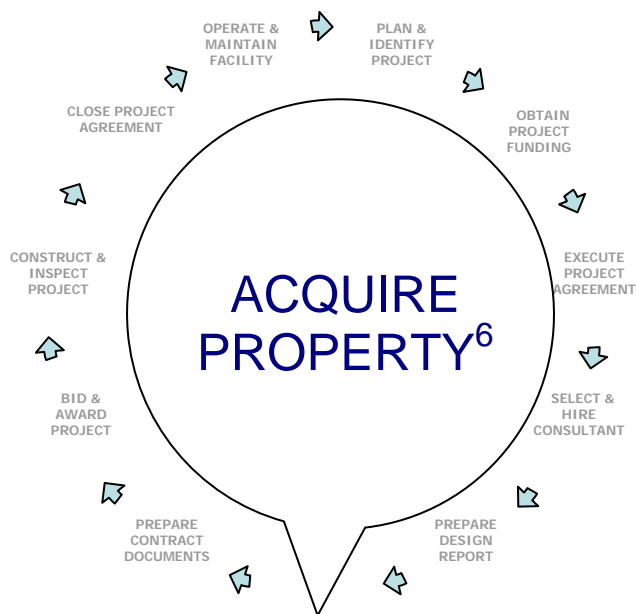
A Right of Way (**ROW**) Table of Acquisitions and plan showing existing property lines and proposed acquisitions must be included in the design report. The table identifies property to be acquired and affected owners.

After final SEQRA and NEPA determinations are made and the preferred alternative is selected, then **design approval**⁵ is granted by the sponsor, the NYSDOT Regional Director or FHWA. A certification, signed and sealed by the responsible professional, stating that the project was developed in accordance with current requirements, must accompany the Final Design Report.



4 Reference LAFAP Manual Chapters 7 and 8

5 Reference LAFAP Manual Section 8.1.4.1



Property owners' rights must be respected throughout the course of project development. **Sponsors must identify existing right of way and/or property boundaries** and either avoid encroachment onto private property or acquire rights to use property necessary for the project, either temporarily or permanently, from property owners in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and the New York State Eminent Domain Procedure Law (EDPL).

Activities associated with the **Right of Way (ROW) Incidental Phase** can begin upon receipt of a written authorization to proceed with these activities from NYSDOT. This usually occurs when preliminary engineering work is authorized.

ROW Incidental Phase activities include:

- title searches,
- creation of a brochure explaining land acquisition procedures and distribution to potentially affected property owners
- map and deed preparation
- property appraisals and reviews by independent qualified appraisers (NYSDOT has a list of State approved consultants who can assist in the appraisal process)
- completion of ROW Table of Acquisitions for inclusion in the project design report,
- development of conceptual stage relocation plans (when displacements of people and/or personal property are necessary)
- public hearings (when project results in significant environmental impacts or displacements of people and/or businesses)

*Project sponsors cannot begin property negotiations, make any commitments or offers, or acquire property prior to the receipt of a written authorization to proceed with right-of-way acquisition phase activities. Failure to comply with this rule will jeopardize federal eligibility of **all** project activities.*

Prerequisites to the **Right of Way Acquisition Phase Authorization** are

- design approval
- completion of an estimate of right of way acquisition costs
- development of acquisition stage relocation plans (when displacements of people and/or personal property are necessary)

Acquisition Phase activities include

- written offers of just compensation (based on results of the appraisals) to property owners
- payments to property owners (Owners can donate property, but they must first be advised of their rights and sign a waiver.)
- acquisition of title or rights to property
- written diaries for contact made with all persons affected by property acquisition
- completion of the ROW Clearance Certificate

After design approval, the project sponsor will receive **authorization to proceed with detailed design** from NYSDOT. At this point, construction plans, specifications, contract documents and a detailed construction estimate can be prepared. Prior to advertising for bids or proceeding to construction, the sponsor must submit the following documents to NYSDOT:

- **final contract documents** (plans, specifications, and bid documents)
 - standard federal language must be included in the contract documents
 - Federal Davis-Bacon wage rates and NYS prevailing wage rates must be included.
 - projects on the National Highway System (NHS) or State highway system must use NYSDOT specifications, which are in metric units. A sponsor's approved specifications can be used for a project that is off the NHS or State highway system
 - the use of alternate bidding procedures is permitted with approval of NYSDOT.
 - if a project involves the rehabilitation or construction of a building and the total project value is \$50,000 or greater, then the Wicks Law may apply
- an **engineer's estimate** showing an itemized breakdown of costs.
- a **construction management plan**, which indicates how the sponsor proposes to oversee construction to insure that the project is built according to specifications and ensure conformance with federal requirements
- a **ROW Clearance Certificate**, indicating the status of property acquisitions. Rights to property (except releases) must be acquired and payment made to property owners or funds placed in an escrow account prior to the sponsor advertising for bids
- appropriate **certifications** from the licensed professionals responsible for project design
- a copy of fully executed agreements with affected **utility companies and railroads**
- a copy of all required **environmental permits**



Federal Disadvantaged Business Enterprise (**DBE**) language is required in all federal aid contracts regardless of project cost. Formal DBE goals are required in all federal aid contracts estimated at \$1 million or higher. Minority/Women's Business Enterprise (**M/WBE**) language and/or goals cannot be included in federal aid contracts.

Equal Employment Opportunity (**EEO**) requirements govern the use of individual workers (not firms) and are required in all federal aid construction contracts regardless of project cost. A certain percentage of the total work hours on the construction site must consist of minorities and females. Female goals are always 6.9%; minority goals are determined by project location.

Contract documents for all projects must be approved by the sponsor's responsible local official. Projects that are on an NHS roadway or a state highway will require approval by NYSDOT or FHWA.

A NYSDOT **Highway Work Permit** is required for any project that involves any work in the right-of-way

⁶ Reference LAFAP Manual, Chapters 12, 13, 14, and 15



of a state highway.

Generally, the construction of a project is performed by professional contractors. However, in rare cases when it is more cost effective and expedient, construction work may be done by municipal personnel. Sponsors must have the legal right to use their local forces instead of awarding a construction contract and obtain NYSDOT concurrence before beginning construction.

Construction activities, including advertising for bids, cannot begin prior to the receipt of written authorization to proceed with these activities from NYSDOT. This authorization to proceed cannot be granted until design approval and contract document approval have been obtained. Performing construction work prematurely will jeopardize federal funding for all construction-related phases.

Once the authorization to proceed with construction activities has been granted, advertisements soliciting bids from general contractors can be published⁷. **Advertisements** must

- include DBE Goals
- be placed in the New York State Contract Reporter and in a newspaper published in the county in which the project is located
- be published a minimum of **three weeks** prior to the bid opening

A construction contract must be awarded to the lowest responsive and responsible bidder as determined by a competitive bidding process. Bids must be opened and read aloud in public. Negotiation with the low bidder is strictly prohibited under federal law.

Prior to award of the construction contract the sponsor must

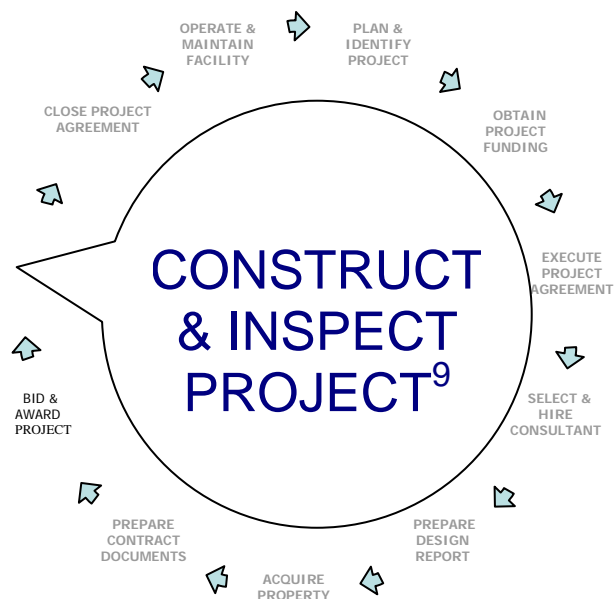
- analyze the low bid
- evaluate the responsibility of the low bidder
- review the low bidder's proposed DBE plan and obtain NYSDOT approval
- obtain NYSDOT concurrence with contract award if the project is on a NHS roadway or a state highway

After the sponsor's review has been completed, the sponsor submits a contract award documentation package to NYSDOT.

⁷ Reference LAFAP Manual, Chapter 14

The project sponsor is responsible for providing **adequate oversight and inspection** of construction work to ensure compliance with the construction management plan, contract plans and specifications, and federal requirements. Documentation must be kept to satisfy possible future audits.

Prior to beginning of construction work, a **preconstruction meeting is required**. Required attendees include representatives from the sponsor, the construction inspection team, the contractor(s), and NYSDOT.



Any modifications to the work shown in the contract documents require a Change Order. All change orders must be submitted to NYSDOT. NYSDOT must approve change orders that:

- contain significant new items
- involve significant changes
- provide for work outside of the contract limits
- involve work that is outside of the contract scope
- raise the contract total to a level that exceeds the amount of funding contained in the State/local agreement

All other change orders may be approved by the sponsor.

Change orders may be processed using the sponsor's procedures and forms or NYSDOT forms may be adopted. The change order must

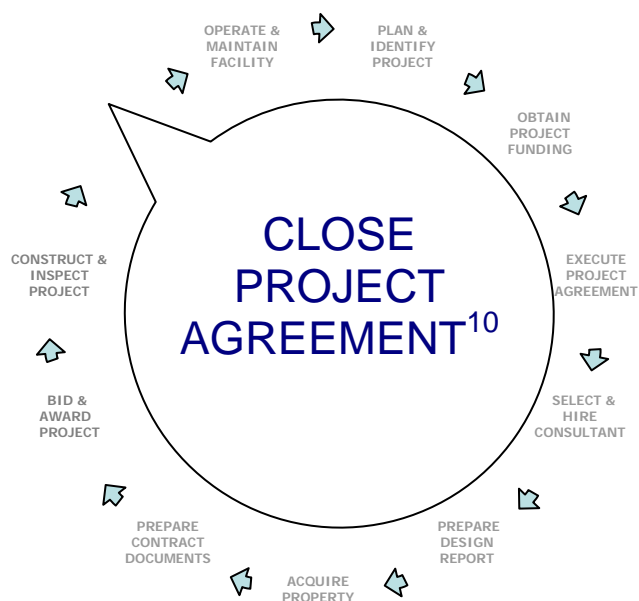
- provide sufficient explanation to ascertain that the work is necessary,
- be consistent with specifications
- be within the scope and intent of the State/Local agreement.

All **subcontractors must be approved** by the sponsor prior to the start of any work. Subcontractor review is identical to prime contractor review.

Final inspection of the project is performed by the sponsor. NYSDOT should be invited to attend the final inspection.

When construction is complete, the sponsor is responsible for

- formally accepting construction of the project
- closing all agreements with contractor(s), utility companies, railroads, consultants, etc.
- notifying NYSDOT of project acceptance



To close the project agreement, the sponsor submits the following documentation to NYSDOT:

- a final reimbursement request
- a Final Acceptance Form, indicating completion of all project related contracts including construction, engineering services, utility agreements, railroad agreements, and right of way transactions
- a Certification of Construction Inspection
- a Certification of Construction Acceptance
- a Project Financial Summary
- an acknowledgement of the date of completion of the most recent

Federal Single Audit Report

- an acknowledgement of the date of completion of the Consultant Audit Report for projects with consultant contracts greater than \$300,000
- if work is on a state highway, a copy of the Highway Work Permit indicating acceptance by NYSDOT
- as-built plans are required for projects that involve
 - work on a state highway or national highway system
 - bridges (a load rating report and a request for a bridge inspection are also required)
- a final Disadvantaged Business Enterprise (DBE) Utilization Report
- a final Prime Contractor Report of Contract Payments
- a final Equal Employment Opportunity (EEO) Utilization Report

Upon receipt of the above documentation, NYSDOT will make final reimbursement to the sponsor and will close the State/sponsor project agreement.

A federally funded facility must be operated and maintained for its useful life. In the event that a federally funded facility does not perform as intended for its useful life, the sponsor will be asked to pay back the prorated portion of project funds.

Federal funds can not be used for routine maintenance, but can be used for resurfacing, rehabilitation, or reconstruction work.

Generally, fees can not be charged for access to projects or activities funded with federal monies.

In those rare instances when a minimal fee may be charged, proceeds from the charge must not be excessive and, by agreement, are solely used for the maintenance and operation of the facility.

Sponsors may be required to prepare maintenance and operation plans for inclusion in appropriate project documents.

